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DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

(C-489-817)

Oil Country Tubular Goods from Turkey: Notice of Court Decision Not in Harmony With the Final Determination of the Countervailing Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: On February 22, 2016, the United States Court of International Trade (CIT) sustained<sup>1</sup> the Department of Commerce's (the Department) final results of a redetermination<sup>2</sup> issued pursuant to the CIT's remand orders in *Borusan Mannesmann Boru Sanayi Ve Ticaret A.S. and Borusan Istikbal Ticaret v. United States*, 61 F. Supp. 3d 1306 (CIT April 22, 2015) (*Borusan*) and *Maverick Tube Corporation v. United States*, Consol. Court No. 14-00229, Slip Op. 15-59 (CIT June 15, 2015) (*Maverick*)<sup>3</sup>, with respect to the Department's *Final Determination* of the countervailing duty (CVD) investigation of oil country tubular goods from Turkey.<sup>4</sup> Consistent with the decision of the United States Court of Appeals for the Federal Circuit (CAFC) in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), as clarified by *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*), the Department is notifying the public that the Court's final

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<sup>1</sup> See *Maverick Tube Corporation v. United States*, CIT Consol. Court No. 14-00229, Slip Op. 16-16 (February 22, 2016).

<sup>2</sup> See *Final Results of Remand Redetermination*, Court No. 14-00229, dated August 31, 2015, available at: <http://ia.ita.doc.gov/remands/> (*Remand Redetermination*).

<sup>3</sup> On June 22, 2015, the CIT granted a motion to consolidate Court No. 14-00214 into Consolidated Court No. 14-00229.

<sup>4</sup> See *Certain Oil Country Tubular Goods From the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 79 FR 41964 (July 18, 2014) (*Final Determination*). The Department issued a countervailing duty order in this proceeding on September 10, 2014. See *Certain Oil Country Tubular Goods From India and the Republic of Turkey: Countervailing Duty Orders and Amended Affirmative Final Countervailing Duty Determination for India*, 79 FR 53688 (September 10, 2014) (*Order*).

judgment in this case is not in harmony with the *Final Determination*, and that the Department is amending the *Final Determination* with respect to Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (Borusan), Toscelik Profil ve Sac Endustrisi A.S. (Toscelik), and the “all others” rate.

DATES: *Effective Date*: March 3, 2016

FOR FURTHER INFORMATION CONTACT: Peter Zukowski or Nicholas Czajkowski, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC, 20230; telephone (202) 482-0189 or (202) 482-1395, respectively.

SUPPLEMENTARY INFORMATION:

Background

In *Borusan*, the CIT remanded for further consideration the Department’s finding of distortion in the Turkish hot-rolled steel (HRS) market, the Department’s selection of a HRS benchmark, and the Department’s application of facts available with adverse inferences with respect to purchases of HRS by the respondent Borusan. In *Maverick*, the CIT remanded issues pertaining to the Department’s HRS benchmark calculations as well and, in addition, the Department’s benchmark valuation for a parcel of land that the Government of Turkey (GOT) granted to the respondent Toscelik in 2008 for less than adequate remuneration (LTAR).

On August 31, 2015, the Department issued its *Remand Redetermination*. In its *Remand Redetermination*, the Department, under protest, conducted a new HRS market analysis consistent with the Court’s remand order, determined that under that specific analysis the HRS market was not distorted in Turkey, and pursuant to section 19 CFR 351.511(a)(2)(ii), determined to use transaction prices in Turkey as a benchmark to calculate the benefit from the

provision of HRS to Borusan and Toscelik during the period of investigation.<sup>5</sup> In addition, the Department revised the benchmark valuation to calculate the benefit Toscelik received from the provision of the land parcel for LTAR.<sup>6</sup> The resulting calculations have changed the countervailing duty rates calculated for Borusan, Toscelik, and the all others rate.

As explained above, on February 22, 2016, the CIT affirmed the Department's *Remand Redetermination*.

#### Timken Notice

In its decision in *Timken*, as clarified by *Diamond Sawblades*, the CAFC held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), the Department must publish a notice of a court decision that is not “in harmony” with a Department determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT's February 22, 2016, final judgment affirming the *Remand Redetermination* constitutes a final decision of that court which is not in harmony with the *Final Determination*. This notice is published in fulfillment of the publication requirements of *Timken*. Accordingly, the Department will continue suspension of liquidation of the subject merchandise pending expiration of the period of appeal or, if appealed, pending a final and conclusive court decision.

#### Amended Final Determination

Because there is now a final court decision with respect to the *Final Determination*, the Department amends its *Final Determination*. The Department finds that the following revised net countervailable subsidy rates exist:

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<sup>5</sup> *Remand Redetermination* at 18.

<sup>6</sup> *Id.* at 28.

Producer/Exporter	Net Subsidy Rate (Percent)
Borusan Istikbal Ticaret, Borusan Mannesmann Boru Sanayi, Borusan Mannesmann Boru Yatirim Holding A.S., and Borusan Holding A.S.	2.39
Tosyali Dis Ticaret A.S, Tosçelik Profil ve Sac Endustrisi A.S., Tosyali Elektrik Enerjisi Toptan Satis Ith. Ihr. A.S., Tosyali Demir Celik San. A.S., and Tosyali Holding A.S.	0.95 ( <i>de minimis</i> )
All Others	2.39

Because the revised countervailable subsidy rate for Toscelik is *de minimis*, there is now a negative countervailing duty determination for Toscelik. Accordingly, the Department will instruct United States Customs and Border Protection (CBP) to continue suspension of liquidation of Toscelik’s subject merchandise, but set the cash deposit rate for Toscelik to zero pending a final and conclusive court decision.

For Borusan, the Department will instruct CBP to set the cash deposit rate to the rate listed above, again, pending a final and conclusive court decision.

In the *Final Determination*, in accordance with section 705(c)(5)(A) of the Act, for companies not individually investigated, we applied an “all-others” rate of 9.21 percent. This rate was calculated as the average of the rates determined for Borusan and Toscelik (15.89 and 2.53, respectively).<sup>7</sup> As noted above, Toscelik’s amended countervailable subsidy rate is *de minimis*. Section 705(c)(5)(i) of the Act stipulates that the “all-others” rate should exclude zero and *de minimis* rates calculated for the companies individually investigated. Therefore, for purposes of this amended *Final Determination*, the Department will instruct CBP that the “all-others” cash deposit rate is to be amended to Borusan’s revised calculated subsidy rate, 2.39 percent.

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<sup>7</sup> See *Final Determination*, 79 FR at 41965.

This notice is issued and published in accordance with sections 516A(e)(1), 705(c)(1)(B), and 777(i)(1) of the Act.

Dated: March 4, 2016.

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Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

[FR Doc. 2016-05408 Filed: 3/9/2016 8:45 am; Publication Date: 3/10/2016]